United Nations CCPR/C/SR.3066

International Covenant on Civil and Political Rights

Distr.: General
30 April 2014

Original: English

Human Rights Committee
110th session

Summary record of the 3066th meeting
Held at the Palais Wilson, Geneva, on Friday, 28 March 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

Contents

Organizational and other matters

Draft report by the Special Rapporteur on new communications and interim measures

Draft note prepared by the Rapporteur on using other treaty bodies' interpretations to construe the Covenant

Consideration of document A/68/L.37

Closure of the session

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.5108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.14-42038 (E) 290414 300414

1442038

Please recycle

The meeting was called to order at 3 p.m.

Organizational and other matters

Draft report by the Special Rapporteur on new communications and interim measures (CCPR/C/110/R.4)

1. **The Chairperson** said he took it that the Committee wished to adopt the draft report by the Special Rapporteur on new communications and interim measures on the mandate of the Special Rapporteur.

2. *It was so decided.*

Draft note prepared by the Rapporteur on using other treaty bodies' interpretations to construe the Covenant (CCPR/C/109/R.4)

3. **Mr. Neuman**, introducing the draft note, said that its purpose was to explore what could be said on the subject of using other treaty bodies' interpretations to construe the Covenant, not to advocate indiscriminate use of those interpretations. He then summarized the draft note, pointing out various possible interpretations of article 31, paragraph 3, of the Vienna Convention on the Law of Treaties and the various resulting understandings of the relationship between the Covenant and other core human rights treaties. While the argument could also be made that there was no relationship between the core treaties that would justify external reference in interpreting the Covenant, he personally was in favour of engaging in dialogue with the other treaty bodies so that they could learn from each other.

4. One reason for using core treaties in construing the Covenant was to prevent incompatible interpretations of human rights by different treaty bodies, either when treaties or their interpretations placed contradictory legal obligations on States or when one treaty protected a right more strictly than another treaty. Convergent interpretations, on the other hand, might be thought to express comity with other treaty bodies, and they would also facilitate the work of the secretariat and reduce costs. The use of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in construing the Covenant provided an example of both convergence and divergence.

5. Some special problems in using the texts of other treaties arose with regard to: the special relationship between the two covenants; later core treaties that addressed both civil and political rights and social and economic rights; treaties that set forth a transformative new conception of the way certain categories of persons should be perceived; and treaties that had few States parties but were nonetheless considered to be core treaties. Using interpretations by other treaty bodies raised additional issues, such as how the Committee should react when a treaty body changed its interpretation of a provision, and whether or not the Committee should cite other treaty bodies' interpretations in its own work.

6. Lastly, it was important to consider to what extent the Committee's use of other treaties and interpretations by other treaty bodies would make it an enforcer of those treaties, and what the ramifications might be in various situations. For example, if a State was a party to the Covenant and had accepted its communications procedure and was a party to another treaty but had not accepted its communications procedure, would the Committee then become the body that indirectly adjudicated under the other treaty's Optional Protocol? The impact on the content of lists of issues and concluding observations should also be considered.

7. **The Chairperson** said that the draft note was extremely topical, given that the Committee had recently held informal discussions with two other treaty bodies on related issues. It should be borne in mind that, under the International Convention for the Protection of All Persons from Enforced Disappearance, the Committee on Enforced

Disappearances was required to consult other treaty bodies, in particular the Human Rights Committee, with a view to ensuring the consistency of their respective observations and recommendations.

8. **Mr. Shany** asked Mr. Neuman to share his thoughts on how the Committee should consider norms or interpretations of other treaties that had assumed the status of customary international law. Perhaps article 31, paragraph 3 (b), of the Vienna Convention on the Law of Treaties could justify the use of other treaty bodies' interpretations in the case of treaties that were designed to implement a provision of the Covenant, such as the Convention against Torture. In his view, the Committee should engage in dialogue not only with treaty bodies in the United Nations system but also with regional bodies. The Committee should not deviate from the norms of treaties designed to implement the Covenant unless it had compelling reasons for doing so. In the case of non-implementing treaties, their norms and the jurisprudence of the relevant monitoring body should be given due consideration only.

9. **Mr. Flinterman** said that the draft note raised the interesting issue of whether a treaty body system really existed or should exist. Article 27 of the International Convention for the Protection of All Persons from Enforced Disappearance was one indicator that there was some awareness of the need for a greater focus on the general human rights instruments rather than a wide dispersal among specific instruments. He suggested that the Rapporteur's note might be incorporated into the celebrations of the fiftieth anniversary of the International Bill of Rights in 2016 as a way of arguing the need for unity and a unified interpretation of human rights. The other treaty bodies could be informed, via the next meeting of chairpersons of the human rights treaty bodies, that the Committee had begun discussing the issue.

10. **The Chairperson** said that he would be sure to relay the message at the meeting of chairpersons.

11. **Mr. Fathalla** said that it was very important to ensure consistency among the treaty bodies. A clear message should be sent to the other bodies that they should consider the Covenant when interpreting their own treaties, as it served as an umbrella treaty that dealt with human rights in a general way. At the same time, the Committee should consider the innovations introduced by younger treaty bodies. If States saw that the various bodies were working together they would have greater confidence in the system as a whole.

12. **Mr. Iwasawa** said that while consistency of interpretation was important in order to prevent contradictions, the value of using the Vienna Convention on the Law of Treaties for that purpose was not entirely clear. In particular, it was difficult to see how article 31, paragraph 3 (a), of the Convention could be regarded as implying an obligation on the Committee to construe the Covenant in the light of an interpretation given to another instrument by a party thereto. Similarly, it was implausible to read article 31, paragraph 3 (b), of the Convention as requiring the Committee to interpret the Covenant in the light of another monitoring body's practice in applying the treaty for which it was responsible. It was through dialogue and cooperation between treaty bodies rather than reliance on the Vienna Convention that consistency in the interpretation of human rights instruments would be achieved.

13. **Mr. Salvioli** said that although the Committee was under no obligation to follow the interpretations of other treaty bodies, it should take their views into account, as appropriate, with a view to giving fuller effect to the Covenant. For example, article 3 of the Covenant on equality between men and women might usefully be considered in the light of progress made in that connection by the Committee on the Elimination of Discrimination against Women. Likewise, the Committee might benefit from viewing article 20 on the advocacy of hatred in the context of relevant decisions made by the Committee on the Elimination of Racial Discrimination. The Committee should always bear in mind that international

treaties were living instruments and that Covenant provisions could acquire new dimensions even in the absence of amendments thereto.

14. **The Chairperson**, recalling that the International Convention on the Elimination of All Forms of Racial Discrimination had been adopted before the Covenant, said that a further issue to consider was the question of the respect to be given to the views of the Committee on the Elimination of Racial Discrimination. In addition, it was necessary to decide whether reference should be made not only to the opinions of treaty bodies but also to those of special procedures, in particular the Working Group on Arbitrary Detention, whose mandate explicitly required it to apply article 9 of the Covenant in respect of States parties thereto. Although the Committee's interpretation of that article should prevail over any interpretation given by the Working Group, it would nonetheless be useful for the Committee to take account of that body's views. Another point to consider was the difficulty of identifying the exact nature of any differences between interpretations made by the Committee and those made by other treaty bodies. For example, Mr. Neuman had highlighted the fact that the definition of torture contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was framed in such way as to suggest a narrower application than that provided for under the Covenant. However, the evolving interpretation given to the definition of torture by the Committee against Torture meant that in practice a broader definition was applied than that set out in the Convention.

15. As had been suggested, it would indeed be useful to continue discussion of the topic as a means of contributing to events to mark the fiftieth anniversary of the International Bill of Human Rights in 2016. The initiative would not only enhance the Committee's awareness of the practice of other treaty bodies in matters of concern to it but also signal to the Secretariat its openness to receiving such information. As to the likely final outcome of the discussions, it was difficult to envisage circumstances under which the Committee would consider itself bound by the interpretation of another treaty body concerning any issue falling under the Covenant.

16. **Mr. Neuman**, summing up the discussion, said that the Committee was generally agreed that dialogue with other treaty bodies was the best approach for moving forward on the issue. A number of questions remained to be considered in greater detail, however, including how to conduct dialogue with other bodies, whether explicitly or implicitly, and what to include in the list of issues in the light of questions raised previously by other treaty bodies, particularly with a view to giving guidance to the secretariat in that regard.

Consideration of document A/68/L.37

17. **The Chairperson** announced that the draft resolution submitted by the President of the General Assembly on strengthening and enhancing the effective functioning of the human rights treaty body system (A/68/L.37) had just been adopted by the Fifth Committee, making its adoption by the General Assembly in plenary meeting a formality. Thanks to the efforts of the United Nations High Commissioner for Human Rights, with valuable support from several intergovernmental, semi-governmental and non-governmental organizations, the resolution included a number of positive initiatives, including the provision of the resources necessary to allow treaty bodies to tackle their backlogs in considering State party reports. In that regard, the Bureau had requested the secretariat to examine the question of using dual chambers to examine reports.

18. **Mr. Shany** said that he hoped that the Committee would in future be able to use the extra time available to it to consider country situations in the absence of a report.

19. **The Chairperson,** referring to the Committee's main achievements and decisions during the current session, said that it had adopted concluding observations for Chad, Kyrgyzstan, Latvia, Nepal, Sierra Leone and the USA; lists of issues for Argentina,

Ecuador, Malta, Montenegro, Sri Lanka, Romania, New Zealand, Sweden and Haiti; and reports on the follow-up to concluding observations and communications. The Committee had also considered 36 communications. It had ruled on the admissibility of 4 cases and on the merits of 18, and had decided to discontinue consideration of 14 others. The Committee had completed its first reading of its draft general comment No. 35 on article 9 of the Covenant on the right to liberty and security of person. In the context of collaboration with other treaty bodies, there had been an interesting exchange with the Committee on the Rights of Persons with Disabilities. If he heard no objection, he would take it that the Committee wished to adopt the Bureau's recommendations.

20. *It was so decided.*

Closure of the session

21. After an exchange of courtesies, **the Chairperson** declared the 110th session of the Human Rights Committee closed.

The meeting rose at 4.20 p.m.